

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AMY PRICE,	§	
	§	No. 294, 2010
Respondent Below,	§	
Appellant,	§	Court Below: Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
MATTHEW WILLIAMS,	§	File No. CN01-08609
	§	Petition Nos. 02-20041, 10-10189
Petitioner Below,	§	
Appellee.	§	

Submitted: November 3, 2010

Decided: November 24, 2010

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

**ORDER**

This 24<sup>th</sup> day of November 2010, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Amy Price, the respondent below, appeals from Family Court orders (a) denying her motion to vacate the dismissal of her original counterclaim for custody of Andrew, a minor child, and (b) dismissing her later-filed custody petition.<sup>1</sup>

Because we conclude that the Family Court erred, we reverse and remand.

2. Matthew Williams (“Father”), the petitioner below, and Amy Price (“Mother”) are the biological parents of Andrew. On July 2, 2002, Father filed a

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<sup>1</sup> The Court, *sua sponte*, has assigned pseudonyms to the parties under Supreme Court Rule 7(d).

Petition for Custody in the Family Court (“Father’s 2002 Custody Petition”). Mother filed a timely Answer and Counterclaim for Custody on July 18, 2002 (“Mother’s 2002 Counterclaim Custody Petition”).

3. Family Court Civil Rule 16.2 requires both parties to a custody proceeding to complete a court-approved parent education program and to file a certification of completion of that program with the court.<sup>2</sup> The Rule requires the parent who initially filed the custody petition to file his or her completion certificate within 180 days of that filing,<sup>3</sup> and states that the failure to do so will result in the dismissal of that parent’s custody petition.<sup>4</sup>

4. Mother completed the required parent-education program on September 24, 2002, and she timely filed her certificate of completion with the Family Court on September 27, 2002. Inexplicably, although Mother’s certificate was placed into the Family Court file, it was never docketed.<sup>5</sup> That same day, Mother also

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<sup>2</sup> DEL. FAM. CT. CIV. R. 16.2.

<sup>3</sup> DEL. FAM. CT. CIV. R. 16.2(a)(3) provides, in part:

The petitioner shall submit an original copy of the certificate of completion for the petitioner prior to the scheduling of a final custody or visitation proceeding before a judge or commissioner. Failure to submit such certificate within 180 days of the filing of the petition will result in the petition being dismissed.

<sup>4</sup> *Id.*

<sup>5</sup> The record shows that the Family Court received Mother’s Certificate of Completion on September 27, 2002. Mother’s certificate, however, was not docketed until August 27, 2010.

moved for temporary visitation rights,<sup>6</sup> to which Father responded. On October 7, 2002, the parties entered into an Interim Consent Custody Order pending Father's completion of the parent-education program ("2002 Interim Custody Order"). Upon the filing of Father's certification of completion, the Family Court was to schedule a final hearing to determine custody for Andrew.

5. The record discloses that Father never filed his certificate of completion. As a result, the Family Court never scheduled a final hearing, the parties continued to operate under the 2002 Interim Custody Order,<sup>7</sup> and the case remained dormant until March 10, 2010. On that date, a Family Court Judicial Case Manager recommended that Father's 2002 Custody Petition be dismissed for lack of prosecution, because none of the requisite parent-education completion certifications had been filed. The Family Court entered an order of dismissal that same day,<sup>8</sup> apparently unaware that Mother had, in fact, satisfied the requirements of Rule 16.2 by timely filing her parent-education completion certificate. The

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<sup>6</sup> The Family Court docket indicates that this motion was filed by Father, but it was actually filed by Mother.

<sup>7</sup> Between 2002 and 2005, the parties continued to litigate child support issues in related Family Court actions. Family Court Petition Nos. 01-20229, 02-24344, 04-21462, 05-05005, and 09-05119. In 2005, Mother also filed for an Order of Protection from Abuse, which expired on August 19, 2006. Family Court Petition No. 05-24263. At that point, the parties reverted to operating under the 2002 Interim Custody Order.

<sup>8</sup> The March 10, 2010 Family Court order lists the petitioner as Father, and the respondent as Mother, but makes no reference to Mother's 2002 Counterclaim Custody Petition.

Family Court was also apparently unaware that Mother's filing had never been docketed by the Family Court Clerk.

6. Two days after the dismissal of Father's 2002 Custody Petition and Mother's 2002 Counterclaim Custody Petition, Father filed a new Petition for Custody in Maryland, on March 12, 2010 ("Father's 2010 Maryland Petition"). Mother responded by filing a new Petition for Custody in Delaware on March 23, 2010 ("Mother's 2010 Custody Petition"). On April 1, 2010, Father moved to dismiss Mother's 2010 Custody Petition, to which Mother responded on April 13, 2010, by moving to vacate the Family Court's March 10th dismissal of her 2002 Counterclaim Custody Petition.

7. The Family Court denied Mother's motion to vacate, even though Father had not yet filed a response, holding that: "[t]his Motion is denied on a theory of laches. Mother waited too long to attempt to exercise her rights (9½ years)."<sup>9</sup> The Family Court also dismissed Mother's 2010 Custody Petition for lack of jurisdiction, because Father had already filed his 2010 Maryland Custody Petition after his 2002 Custody Petition (and Mother's 2002 Counterclaim Custody Petition) had been dismissed.<sup>10</sup> Mother appeals to this Court from both the Family

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<sup>9</sup> Pet. No. 02-20041, Fam. Ct. Order (Apr. 19, 2010).

<sup>10</sup> Pet. No. 10-10189, Fam. Ct. Order (Apr. 19, 2010).

Court's denial of her April 8th motion to vacate, and the dismissal of her 2010 Custody Petition.

8. The sole issue on appeal is whether the Family Court erred by declining to vacate its March 10th order dismissing Mother's 2002 Counterclaim Custody Petition on the ground of laches. Because Family Court personnel were responsible for that delay, Mother contends, that court erred as a matter of law and abused its discretion, based on factual determinations that were unsupported by the record. We agree.

9. This Court ordinarily reviews a refusal to vacate a dismissal for abuse of discretion.<sup>11</sup> To the extent that Mother's claim raises questions of legal error, we review the trial court's legal formulations and application of law to fact *de novo*.<sup>12</sup> To the extent the Family Court's decision was based on findings of fact that are sufficiently supported by the record and are the product of an orderly and logical reasoning process, we will not overturn those findings unless they are "clearly wrong and justice requires that they be overturned."<sup>13</sup>

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<sup>11</sup> *Scarpinato v. Nehring*, 864 A.2d 929 (Table), 2004 WL 2850078, at \*1 (Del. 2004).

<sup>12</sup> *Yost v. Johnson*, 591 A.2d 178, 181 (Del. 1991).

<sup>13</sup> *Acierno v. Worthy Bros. Pipeline Corp.*, 693 A.2d 1066, 1069 (Del. 1997).

10. We conclude that the Family Court erred as a matter of law, because the laches defense does not bar Mother's 2002 Counterclaim Custody Petition.<sup>14</sup> Laches is an equitable defense that requires the party raising it to show three things: "first, knowledge by the claimant; second, unreasonable delay in bringing the claim; and third, resulting prejudice to the defendant."<sup>15</sup> Mother, however, did not "unreasonabl[y] delay" in bringing her counterclaim for custody. Indeed, she did not delay at all. She timely filed her Answer and Counterclaim, only sixteen days after Father filed his 2002 Custody Petition. The delay in this case occurred *after* Mother had timely filed her custody counterclaim. Therefore, no laches defense ever arose.

11. In these circumstances, a more appropriate analysis would have been on the basis of failure to prosecute under Rule 41(e).<sup>16</sup> But even on that basis, Mother's 2002 Counterclaim Custody Petition was not dismissible, because any delay was due solely to the Family Court's failure to docket Mother's timely-filed certificate of completion. That mistake, and not any action (or inaction) by Mother, is what caused the trial court not to schedule a final custody hearing.

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<sup>14</sup> This Court has not yet addressed the question of whether a court may, *sua sponte*, raise laches as a bar to a claim. In addition, this Court has never ruled on whether laches can apply to a custody petition. But because we conclude that laches does not apply, we need not address these questions at this time.

<sup>15</sup> *Homestore, Inc. v. Tafeen*, 888 A.2d 204, 210 (Del. 2005).

<sup>16</sup> See DEL. FAM. CT. CIV. R. 41(e).

Mother should not be penalized for the Family Court's mistake.<sup>17</sup> It may well have been proper for the Family Court to dismiss Father's 2002 Custody Petition for Father's failure to comply with Rule 16.2(a)(3) because he never filed his certificate of completion. But, it was error for the Family Court to dismiss Mother's counterclaim where she had complied with all applicable requirements.<sup>18</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **REVERSED** and the matter is **REMANDED** for consideration of Mother's 2002 Counterclaim Custody Petition. Mother's 2010 Custody Petition appeal is **DISMISSED** as moot. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>17</sup> See, e.g., *Bowling v. Buderus*, 111 F.R.D. 322, 324 (M.D. Ala. 1986) ("Plaintiff should not be penalized for the mistake of the Court."); cf. *Johnson v. United States*, 590 F.Supp.2d 101, 111 n.6 (D.D.C. 2008) ("Generally, [a *pro se*] plaintiff is not penalized for errors or mistakes of court officers in effecting service of process.").

<sup>18</sup> Moreover, even if the Family Court wished to dismiss for Mother's failure to prosecute, the Family Court did not follow the appropriate procedures under Rule 41(e), which requires that the court notify the parties of the pending dismissal, and give parties 30 days to respond. DEL. FAM. CT. CIV. R. 41(e).